

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION**

**IN RE: DIGITEK PRODUCT LIABILITY  
LITIGATION**

**MDL NO. 1968**

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**THIS DOCUMENT RELATES TO ALL CASES**

**MOTION TO DISMISS COUNT EIGHTEEN OF THE  
MASTER CONSOLIDATED COMPLAINT FOR INDIVIDUALS**

Defendants Actavis Totowa LLC, Actavis Inc., Actavis Elizabeth LLC, Mylan Inc., Mylan Pharmaceuticals Inc., Mylan Bertek Pharmaceuticals Inc., and UDL Laboratories, Inc. (“Defendants”), pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, respectfully request that this Court dismiss Count Eighteen: Medicare Secondary Payer Act of the Master Consolidated Complaint for Individuals. Count Eighteen fails to state a claim upon which relief can be granted because: 1) Plaintiffs fail to allege that Defendants are a “primary plan”; and 2) Defendants, as alleged tortfeasors, have no responsibility for any Medicare payments to the Plaintiffs. As a result, Plaintiffs fail to allege the necessary elements of a private right of action under 42 U.S.C. § 1395y(b)(3)(A) and Count Eighteen of the Master Complaint should therefore be dismissed.

The grounds for this Motion are more fully set forth in the attached Memorandum in Support, which is fully incorporated herein.

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 20, 2009, I electronically filed the foregoing "Motion to Dismiss Count Eighteen of the Master Consolidated Complaint for Individuals" with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

A handwritten signature in black ink, appearing to read "Rebecca A. Betts", is written over a horizontal line.

REBECCA A. BETTS (WVSB # 329)

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